

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:)
)
JOHN EDWARD KOZ AND) Case No. 16-30917
HEATHER MASSEY KOZ,) Chapter 7
)
Debtors.)

MOTION FOR AN ORDER PURSUANT TO BANKRUPTCY CODE §105 AND B.R. 9019
AUTORIZING AND APPROVING SETTLEMENT OF CONTROVERSY

NOW COMES the Trustee, A. Burton Shuford, by and through his undersigned attorney, and moves this Court for an Order, pursuant to Bankruptcy Code §105 and B.R. 9019, authorizing and approving the Settlement Agreement by and between A. Burton Shuford, Trustee in Bankruptcy for John Edward Koz and Heather Massey Koz (the "Trustee") and Heather Massey Koz (the "Debtor") and respectfully represents:

BACKGROUND

1. On June 2, 2016 (the "Petition Date"), the Debtor filed a voluntary bankruptcy petition under Chapter 7 of the United States Bankruptcy Code with the Western District of North Carolina and A. Burton Shuford was appointed Chapter 7 Trustee.

2. The Trustee and the Debtor have engaged in discussions and negotiations in an attempt to settle and resolve the various matters in contention between them and have agreed to the Settlement Agreement (the "Settlement") entered into by and between the Trustee and the Debtor annexed hereto as Exhibit "A."

3. This Court has jurisdiction to adjudicate the issues raised in this Motion pursuant to 28 U.S.C. Section 157 and 28 U.S.C. Section 1334.

4. Venue for this matter is proper in this Court pursuant to 28 U.S.C. Section 1409.

RELIEF REQUESTED

5. Pursuant to this Motion, the Trustee requests that this Court enter an order pursuant to Bankruptcy Code Section 105 and Rule 9019 of the Federal Rules of Bankruptcy Procedure, providing for the settlement of this controversy upon the conditions set forth in the Settlement.

6. On the date of the filing of the Petition the Debtor was the owner of all of the membership interests in Kustom Contracting, LLC ("Kustom").

7. The Trustee has asserted that the Debtor's interest in Kustom is an asset of the Debtor's bankruptcy estate that should be turned over to the Trustee and administered for the benefit of the Debtor's bankruptcy estate.

8. After negotiations with the Debtor, and factoring in potential litigation costs and the risks of litigation, the Trustee and the Debtor have resolved the Trustee's demand for turnover of Kustom without the necessity of litigation, upon the terms and conditions set forth in the attached Settlement Agreement. More specifically, pursuant to the Settlement, the Trustee and the Debtor agree that the Debtor will pay to the Trustee the sum of \$10,000 upon the terms and conditions set out in the Settlement, in final settlement of the Estate's interest in Kustom. In order for this Settlement to bind any of the parties to it, it must be approved by the Bankruptcy Court.

BASIS FOR RELIEF REQUESTED

9. The "approval of [a] proposed compromise and settlement is a matter of this Court's sound discretion." *In re Arrow Air, Inc.*, 85 B.R. 886, 891 (Bankr. S.D. Fla. 1988). In passing upon a proposed settlement, "the bankruptcy court does not substitute its judgment for that of the Trustee [or debtor in possession]". *Depo v. Chase Lincoln First Bank (In re Depo)*, 77 B.R. 381, 384 (citations omitted). Nor is the bankruptcy court to "decide the numerous questions of law and fact raised by [objectors] but rather to canvass the issues and see whether the settlement fall[s] below the lowest point in the range of reasonableness." *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2nd Cir. 1983), cert denied. 464 U.S. 822 (1983) (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir.), cert denied, 409 U.S. 1039 (1972)). See *In re Holywell Corporation, et al.*, 93 B.R. 291, 294 (S.D. Fla 19889) ("In order to exercise this discretion properly, the Court must consider all the relevant facts and evaluate whether the compromise suggested falls below the 'lowest point in the range of reasonableness'") (quoting *In re Teltronics Services, Inc.*, 762 F. 2d 185, 189 (2d Cir 1985)). In passing upon the reasonableness of a proposed compromise, the Court "may give weight to the opinions of the Trustee, the parties and their counsel." *In re Bell & Beckwith*, 93 B.R. 569, 574 (Bankr. N.D. Ohio 1997).

10. In this case, in light of the costs and uncertainty associated with litigating the issues between the Trustee and the Debtor and the risks and difficulties associated with the collection of any award received by the Trustee, the Trustee has elected to enter into the annexed Settlement. The resolution of these claims is far more expedient and cost effective than litigation. As a result, the Trustee believes that the proposed Settlement is fair and reasonable and in the best interests of the estate.

11. Accordingly, and based upon the foregoing, the Trustee respectfully requests that the Court authorize and approve the Settlement as being fair and reasonable and in the best interests of the estate.

WHEREFORE, the Trustee prays for the entry of an order authorizing and approving the Settlement Agreement annexed hereto as Exhibit "A", upon the terms and conditions set forth therein.

This the 1st day of September, 2017.

/s/ A Burton Shuford

A. Burton Shuford, NCBN 10035
Attorney for the Trustee
4700 Lebanon Road, Suite A-2
Mint Hill, NC 28227
Direct Dial: (980) 321-7000
bshuford@abshuford.com

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:)
)
JOHN EDWARD KOZ AND) Case No. 16-30917
HEATHER MASSEY KOZ,) Chapter 7
)
Debtors.)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into this 1st day of September 2017, by and between A. Burton Shuford, Trustee in Bankruptcy for John Edward Koz and Heather Massey Koz (“Trustee”) and Heather Massey Koz (the “Debtor”).

WHEREAS, the Debtor filed a petition under Chapter 7 of the United States Bankruptcy Code with the United States Bankruptcy Court for the Western District of North Carolina on June 2, 2016 and A. Burton Shuford was appointed Chapter 7 Trustee; and

WHEREAS, on the date of the filing of the Petition the Debtor was the owner of all of the membership interests in Kustom Contracting, LLC (“Kustom”); and,

WHEREAS, the Debtor claimed no exemption in her interest in Kustom; and,

WHEREAS, the Trustee has asserted that the Debtor’s interest in Kustom is an asset of the Debtor’s bankruptcy estate that should be turned over to the Trustee and administered for the benefit of the Debtor’s bankruptcy estate; and,

WHEREAS, the Trustee and the Debtor have engaged in discussions and negotiations in an attempt to resolve the Trustee’s claim for turnover of Kustom without the necessity of litigation and the Trustee and Debtor have agreed to settle such demand, upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, it is hereby agreed by and between all parties as follows:

1. That the Debtor will pay to the Trustee, in full satisfaction of the Bankruptcy Estate’s interest in Kustom, the sum of \$10,000 in twelve payments according to the following schedule:



Payment Date	Payment Amount	Remaining Balance
9/30/17	\$500	\$9,500
10/30/17	\$500	\$9,000
11/30/17	\$500	\$8,500
12/30/17	\$500	\$8,000
1/30/18	\$500	\$7,500
2/28/18	\$500	\$7,000
3/30/18	\$500	\$6,500
4/30/18	\$500	\$6,000
5/30/18	\$500	\$5,500
6/30/18	\$500	\$5,000
7/30/18	\$500	\$4,500
8/30/18	\$4,500	\$0

2. That should the Debtor default in the above payments, then the Trustee shall give ten days written notice of such default to the Debtor's attorney and the Debtor at the address set out in the Bankruptcy Court records.
3. Should the Debtor fail to cure the default within ten days of the date of the Trustee's notice thereof, the Trustee may:
 - a) Cancel this agreement;
 - b) Immediately expose the Debtor's interest in Kustom for sale; and,
 - c) Retain any funds paid by the Debtor prior to default as liquidated damages.
4. Upon the Trustee's receipt of the final payment from the Debtor and the final payment clearing the account on which it was drawn and the Trustee having received the funds in the estate bank account, and the Debtor otherwise not being in default of this Settlement Agreement, the Trustee shall be deemed to have waived and released any claim of the Trustee or the Debtor's bankruptcy estate to administer the Debtor's interest in Kustom.
5. The Trustee shall file the appropriate motion with the U.S. Bankruptcy Court to obtain approval of this Agreement. The Trustee believes that this is a fair and reasonable settlement and will inure to the benefit of the Debtor's bankruptcy estate.
6. This Agreement shall be binding upon the Trustee, the Debtor's bankruptcy estate, Debtor and their heirs, successors and/or assigns and shall inure to the benefit of the Trustee, the Debtor's bankruptcy estate and Debtor and their heirs, successors and/or assigns upon its approval by the U.S. Bankruptcy Court.

7. The Trustee and Debtor hereby mutually acknowledge and represent that they have been fully advised by their respective legal counsel of their rights and responsibilities under this Agreement, and that they have read, know and understand completely the contents hereof, and that they have voluntarily executed the same.
8. That each party hereto shall bear its, his or her own costs and attorney's fees incurred.
9. This Agreement constitutes the entire agreement and understanding between the parties relating to the subject matter contained herein, and this Agreement may not be altered, amended or modified in any respect or particular whatsoever, except by a writing duly executed by all parties hereto.
10. This Agreement may be executed in counterparts, each of which shall be an original, so that all of which taken together shall constitute one and the same instrument.
11. The U.S. Bankruptcy Court for the Western District of North Carolina shall retain jurisdiction over the enforcement of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Settlement Agreement to be executed as of the day and year first above written.

/s/ A. Burton Shuford

A. Burton Shuford, N.C. Bar #10035
Attorney for the Trustee
4700 Lebanon Road, Suite #A-2
Mint Hill, NC 28227
Tel. 980.321.7005; Fax 704.943.1152
E-mail: bshuford@abshuford.com

/s/ James H. Henderson

James H. Henderson
Attorney for Heather Massey Koz

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:)
)
JOHN EDWARD KOZ AND) Case No. 16-30917
HEATHER MASSEY KOZ,) Chapter 7
)
Debtors.)

NOTICE OF MOTION FOR AN ORDER PURSUANT TO BANKRUPTCY CODE §105 AND
B. R. 9019 AUTHORIZING AND APPROVING SETTLEMENT OF CONTROVERSY AND
NOTICE OF OPPORTUNITY FOR HEARING

A. Burton Shuford, Trustee, has filed papers with the Court as described above. A copy of this Motion is attached to this Notice. **Your rights may be affected.** You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the court to grant relief requested in the attached Motion, or if you want the court to consider your views on the Motion, then **within 14 days of this notice**, you or your attorney must file with the Court a written response to the Motion which response must comply with local Bankruptcy Rule 9013-1 at:

**Clerk United States Bankruptcy Court
401 West Trade Street
Charlotte, NC 28202**

If you mail your response to the Court for filing, you must mail it early enough so that the court will receive it on or before the date stated above. You must also mail a copy to:

**A. Burton Shuford
4700 Lebanon Road, Suite A-2
Mint Hill, NC 28227**

No hearing will be held on this Motion unless a response is timely filed and served, in which case, the Court will conduct a hearing on **September 25, 2017 at 9:30 a.m.**, at the United States Bankruptcy Court, 401 West Trade Street, Charlotte, North Carolina. No further notice of this hearing will be given. If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an order granting the requested relief.

This the 1st day of September, 2017.

/s/ A Burton Shuford

A. Burton Shuford, NCBN 10035
Attorney for the Trustee
4700 Lebanon Road, Suite A-2
Mint Hill, NC 28227
Direct Dial: (980) 321-7000
bshuford@abshuford.com

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:)
JOHN EDWARD KOZ AND)
HEATHER MASSEY KOZ,) Case No. 16-30917
Debtors.) Chapter 7

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the *MOTION FOR AN ORDER PURSUANT TO BANKRUPTCY CODE §105 AND B. R. 9019 AUTHORIZING AND APPROVING SETTLEMENT OF CONTROVERSY AND NOTICE OF OPPORTUNITY FOR HEARING* by either Electronic Case Filing or Facsimile or by depositing copies of same in the exclusive care and custody of the United States Postal Service, with proper postage thereto affixed, addressed to the parties listed below and on the attached Exhibit A:

This the 1st day of September, 2017.

/s/ A Burton Shuford
A. Burton Shuford, NCBN 10035
4700 Lebanon Road, Suite A-2
Mint Hill, NC 28227
Direct Dial: (980) 321-7000
bshuford@abshuford.com
Attorney for the Trustee

Label Matrix for local noticing
0419-3
Case 16-30917
Western District of North Carolina
Charlotte
Thu Aug 31 16:31:28 EDT 2017

3 C Homes, Inc fka Kola Construction Inc
5029 Poplar Grove Drive
Charlotte, NC 28269-0405

Gulfside Supply, Inc. d/b/a Gulfeagle Supply
c/o Jill C. Walters
Poyner Spruill LLP
P.O. Box 1801
Raleigh, NC 27602-1801

Charlotte Division
401 West Trade Street
Charlotte, NC 28202-1633

Adrian M Lapas
PO Box 46
642 N Spence Avenue
Goldsboro, NC 27534-4233

American Builders & Contractors
Supply Co Inc t/a ABC Supply Co Inc.
c/o Howard M Labiner Esq
PO Box 3425
Matthews, NC 28106-3425

American Builders & Contractors Supply
c/o H. Labiner
PO Box 3425
Matthews, NC 28106-3425

American Express Bank FSB
c/o Becket & Lee, LLP
PO Box 3001
Malvern, PA 19355-0701

American Express Bank FSB
c/o Jonathan Thomas Small Esq
1078 W Fourth Street
Winston Salem, NC 27101-2411

BB&T, Bankruptcy Section
100-50-01-51
P.O. Box 1847
Wilson, NC 27894-1847

Bank of America
9115 Harris Corners Pkwy Ste 150
Charlotte, NC 28269-3778

Beacon Sales Acquisition Inc
c/o Adrian M Lapas
112 N William Street
Goldsboro, NC 27530-3702

(p)BB AND T
PO BOX 1847
WILSON NC 27894-1847

Capital City Roofing Supply of Charlotte
c/o Nathan D Robinson Esq
The Sigmon Law Firm PA
PO Box 17249
Raleigh, NC 27619-7249

Capital City Roofing Supply of Charlotte, LL
c/o Hunter Warfield
4620 Woodland Corporate Blvd.
Tampa, FL 33614-2415

Capital One
PO Box 71087
Charlotte, NC 28272-1087

Capital One Bank (USA), N.A.
PO Box 71083
Charlotte, NC 28272-1083

Carolina Skin Surgery Center
2615 East 7th St
Charlotte, NC 28204-4376

Citibank
PO Box 9001037
Louisville, KY 40290-1037

Concentra Medical Centers
8943 S Tryon St Ste K
Charlotte, NC 28273-3539

Credit Counsel, Inc
1400 N E Miami Gardens Dr #216
Miami, FL 33179-4844

Creditors Collection Bureau Inc
PO Box 63
Kankakee, IL 60901-0063

Go Financial
P.O. Box 52526
Phoenix, AZ 85072-2526

Gulfside Supply Inc
c/o Sarah L DiFranco Esq
301 S College Street Ste 2300
Charlotte, NC 28202-6041

Gulfside Supply, Inc. dba Gulfeagle Supply
P. O. Box 1801
Raleigh, NC 27602-1801

(p) INTERNAL REVENUE SERVICE
CENTRALIZED INSOLVENCY OPERATIONS
PO BOX 7346
PHILADELPHIA PA 19101-7346

Internal Revenue Service
P.O. Box 7317
Philadelphia, PA 19101-7317

Jill C. Walters
Poyner Spruill LLP
P. O. Box 1801
Raleigh, NC 27602-1801

Kola Construction, Inc.
5039 Poplar Grove Road
Charlotte, NC 28269-0405

Kola Exterior, Inc.
5039 Poplar Grove Road
Charlotte, NC 28269-0405

Kola Exteriors, Inc.
5039 Poplar Grove Road
Charlotte, NC 28269-0405

Kustom Contracting, LLC
5039 Poplar Grove Road
Charlotte, NC 28269-0405

Lockhart PLLC
1200 The Plaza Ste F
Charlotte, NC 28205-5046

Mecklenburg Radiology Assoc
PO Box 221249
Charlotte, NC 28222-1249

Medicredit Inc
PO Box 1629
Maryland Heights, MO 63043-0629

NC Department of Revenue
Bankruptcy Unit
PO Box 1168
Raleigh, NC 27602-1168

North Carolina Department of Revenue
Bankruptcy Unit
P.O. Box 1168
Raleigh, NC 27602-1168

Novant Health
PO Box 71049
Charlotte, NC 28272-1049

Ortho Carolina
PO Box 602185
Charlotte, NC 28260-2185

PNC Bank
230 E W.T. Harris Blvd
Charlotte, NC 28262-3492

Presbyterian Pathology Group
PO Box 4370
Florence, SC 29502-4370

Providence Anesthesiology Assoc
PO Box 14000
Belfast, ME 04915-4033

Robert J. Bernhardt
Bernhardt and Strawser, P.A.
5821 Fairview Rd.; Ste. 100
Charlotte, NC 28209-3829

Roofing Supply Group LLC
c/o Philip D Lambeth Esq
Harkey Lambeth LLP
1043 E Morehead Street Ste 300
Charlotte, NC 28204-2871

SCA Collections
300 East Arlington Blvd
Parliament Place, Ste 6-A
Greenville, NC 27858-5043

SRS Distribution Inc
c/o Philip D Lambeth Esq
Harkey Lambeth LLP
1043 E Morehead Street Ste 300
Charlotte, NC 28204-2871

Solstas Lab Partners
PO Box 35907
Greensboro, NC 27425-5907

Solstas Lab Partners
PO Box 740032
Cincinnati, OH 45274-0032

Stern Recovery Services, Inc
PO Box 14899
Greensboro, NC 27415-4899

U.S. Bankruptcy Administrator Office
402 W. Trade Street
Suite 200
Charlotte, NC 28202-1673

William E. Blick
Gordon & Rees, LLP
707 Grant Street, Suite 3800
Pittsburgh, PA 15219-1933

William J Allen P A
PO Box 474690
Charlotte, NC 28247-4690

William T Latham
c/o Harrison A Lord Esq
Bernhardt and Strawser P A
5821 Fairview Road Ste 100
Charlotte, NC 28209-3829

William T. Latham
c/o Robert J. Bernhardt
Bernhardt and Strawser, P.A.
5821 Fairview Rd.; Ste. 100
Charlotte, NC 28209-3829

A. Burton Shuford
4700 Lebanon Road,
Suite #A-2
Mint Hill, NC 28227-8265

Heather Massey Koz
5039 Poplar Grove Dr.
Charlotte, NC 28269-0405

James H. Henderson
JAMES H. HENDERSON, P.C.
1201 Harding Place
Charlotte, NC 28204-2826

John Edward Koz
5039 Poplar Grove Dr.
Charlotte, NC 28269-0405

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Branch Banking & Trust P.O. Box 2306 Wilson, NC 27894	IRS Internal Revenue Service Kansas City, MO 64999-0010
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The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u) Barclays Bank Barclays House 1234 Pavilion Dr Northampton, GU	(d) Internal Revenue Service Centralized Insolvency Operations PO Box 7346 Philadelphia, PA 19101-7346	(d) William J Allen, P.A. PO Box 474690 Charlotte, NC 28247-4690
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(u) Edward P Bowers	(u) Teresa Wilson	End of Label Matrix
		Mailable recipients 59
		Bypassed recipients 5
		Total 64